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Written statement* submitted by Human Rights Now, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Myanmar Must Not Obstruct Accountability for the Rohingya Situation and Should Ensure the Rohingya Refugees' Safe Return to a Stable Situation

1. Introduction—Facing up to the Rohingya Crisis

Human Rights Now (HRN), a Tokyo-based international human rights NGO, expresses grave concern over the human rights situation of the Rohingya people in Rakhine State, Myanmar, as well as in Bangladesh where many refugees have fled following violent crackdowns by Myanmar security forces.

HRN urges the Myanmar government to promote accountability for the violence against the Rohingya, as well as to reform its repatriation policy so that the Rohingya can return to their homes in Myanmar.

2. Ongoing violence against the Rohingya and Developments in Government Policies

Following the attack on a military outpost by a group of Rohingya rebels on 25 August 2017, Myanmar security forces launched a large-scale "clearance" operation targeting the Rohingya. There are consistent reports of disproportionate use of force by military personnel and non-state actors, including reports of extra-judicial killings, rape and arson.[1] The turmoil in the Rakhine State is part of a continuous cycle of violence. For example, similar reports of widespread violence by security forces surfaced in 2016 after armed militants attacked the Myanmar security forces.[2]

Because of these attacks, an estimate of over 650,000 Rohingya have fled to Bangladesh since August 2017.[3] These refugees live in overcrowded camps, with poor hygiene, and lack access to healthcare.
For instance, according to UNICEF, "as few as 3 percent of the children arriving from Myanmar are properly immunized."[4]

Additionally, in a camp near Cox's Bazar, Bangladesh, refugees are contracting diphtheria, and 28-related deaths have been reported thus far.[5] The conditions in the refugee camps are clearly placing the refugees at a higher risk of contracting diseases. In addition to illness and malnutrition, the upcoming monsoon season threatens the lives of tens of thousands of refugees.[6]

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[1] "Rohingya Crisis: Bangladesh to Restrict Movement of Migrants", BBC, 16 Sept. 2017, http://www.bbc.com/news/world-asia-41291650. "HRW: Satellite Data Show Fires Burning in Rakhine State," Al Jazeera, 30 Aug. 2017, http://www.aljazeera.com/news/2017/08/hrw-satellite-data-show-fires-burning-rakhine-state-170829065457014.html. "Independent International Fact Finding Mission on Myanmar concludes visit to Malaysia," United Nations Office of the High Commissioner of Human Rights, 11 December 2017, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22522&LangID=E.

[2] OHCHR, "Myanmar: UN expert warns of worsening rights situation after "lockdown" in Rakhine State," 18 Nov. 2016, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20895&LangID=E.

[3] "Rohingya Emergency", UNHCR, http://www.unhcr.org/rohingya-emergency.html ("Since 25 August 2017, as of 7 January 2018, according to UNHCR's family-counting exercise.").

[4] UNICEF, "Rohingya Refugee Children: UNICEF Emergency Response in Bangladesh", 15 Jan. 2018, https://www.unicef.org/infobycountry/bangladesh_100945.html

[5] Ferrie, "Vaccination Ramps Up in Diphtheria-Hit Rohingya Refugee Camps." Reuters, 15 Jan. 2018,https://www.reuters.com/article/us-bangladesh-rohingya/vaccination-ramps-up-in-diphtheria-hit-rohingya-refugee-camps-idUSKBN1F41JU. Bennett, "Rohingya Face Hunger and Disease in Bangladesh Refugee Camp after Escaping Myanmar Violence", ABC News, 24 Sept. 2017, http://www.abc.net.au/news/2017-09-24/rohingya-face-hunger-and-disease-in-bangaldesh-refugee-camp/8978882

[6] Schlein, "Upcoming Monsoons in Bangladesh Put Rohingya Children at Risk", VOA, 17 Jan. 2018,https://www.voanews.com/a/monsoons-bangladesh-rohingya-children/4211488.html.

In November 2017, the Myanmar government signed an agreement with Bangladesh on the repatriation of Rohingya refugees.[7] However, as of the date of this statement, the process of repatriating Rohingya refugees from Bangladesh has been put on hold by Bangladesh authorities.[8] Furthermore, under current Myanmar policies, the Rohingya will still be required to present official documents upon repatriation.[9] This may disqualify most Rohingya, who are considered illegal immigrants and denied citizenship.

Finally, despite an overwhelming number of testimonies from refugees and condemnations from the international community, Myanmar authorities have consistently denied the accusations with the exception of a case where the army admitted to extra judicial killings of victims they called "Bengali terrorists" [10]. The government's denial encompasses actions like the arbitrary arrest of journalists in retaliation for their reports on the refugee situation in Rakhine State, the release of a statement of "non-cooperation" with the U.N. Special Rapporteur along with a denial of access into the country, and the denial of access to the UN fact-finding mission enacted by the Human Rights Council in March 2017.11

3. Myanmar Must Accept Accountability for its Treatment of the Rohingya

Investigation by a neutral third party and transparency is necessary to provide accountability for the responsible parties and fight the core issue of the recurring violence against Rohingya in Myanmar. The UN General Assembly has emphasized the need for transparency through "full, unrestricted and unmonitored access" for investigations in its situation report on Myanmar from 31 October 2017.12 Similarly, the UN Security Council has called upon the Myanmar government to allow transparent investigations and uphold accountability.13 The Myanmar government's denial of the Rohingya situation, including the arrest of the journalists and refusal to allow entry to the UN Special Rapporteur and UN fact-finding mission undermine the call for transparency and accountability.

4. Myanmar Must Do More to Facilitate the Repatriation of the Rohingya Refugees

Concerns have been raised that the repatriation agreement between the Myanmar and Bangladesh governments may not fully ensure the voluntary and safe return of the refugees to a stable situation consistent with the principle of non-refoulement, recognized as customary international law.[14] For example, UN Secretary General Antonio Guterres has

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[7] Holmes, "Myanmar Signs Pact with Bangladesh over Rohingya Repatriation", The Guardian, 23 Nov 2017, https://www.theguardian.com/world/2017/nov/23/myanmar-signs-pact-with-bangladesh-over-rohingya-repatriation.

[8] Cochrane, "Rohingya Repatriation Delayed by Bangladeshi Officials Just Hours Before It was Due to Begin," ABC News, 23 Jan. 2018, http://www.abc.net.au/news/2018-01-23/bangladesh-delays-rohingya-repatriation-over-logistics/9350772.

[9] Holmes, "Myanmar Signs Pact with Bangladesh Over Rohingya Repatriation," The Guardian, 23 Nov. 2017, https://www.theguardian.com/world/2017/nov/23/myanmar-signs-pact-with-bangladesh-over-rohingya-repatriation.

[10] "Myanmar army rejects UN Rohingya abuse claims" BBC 23 May 2017 http://www.bbc.com/news/world-asia-42639418. Rohingya crisis: Myanmar army admits killings 10 January 2018, http://www.bbc.com/news/world-asia-42639418

11 "Two Reuters Journalists Arrested In Myanmar, Face Official Secrets Charges", Reuters, 13 Dec. 2017, https://www.reuters.com/article/us-myanmar-journalists/two-reuters-journalists-arrested-in-myanmar-face-official-secrets-charges-idUSKBN1E71CO. "Myanmar refuses access to UN Special Rapporteur," http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22553&LangID=E. "Myanmar bars U.N. rights investigator before visit." Reuters. December 20, 2017 https://uk.reuters.com/article/uk-myanmar-rohingya-investigator/myanmar-bars-u-n-rights-investigator-before-visit-idUKKBN1EE0UP?feedType=RSS&feedName=topNews&rpc=69. Fact Finding Mission Statement to the Special Session of the Human Rights Council on the "Situation of human rights of the minority Rohingya Muslim population and other minorities in Rakhine State of Myanmar" December 5, 2017 http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22495&LangID=E

12 UN General Assembly, "Situation of human rights in Myanmar," 31 October 2017, A/C.3/72/L.48, https://undocs.org/A/C.3/72/L.48.

13 UN Security Council, "Security Council Presidential Statement Calls on Myanmar to End Excessive Military Force, Intercommunal Violence in Rakhine State," 6 November 2017, SC/13055, https://www.un.org/press/en/2017/sc13055.doc.htm.

[14] UNHCR, "UNHCR Note on the Principle of Non-Refoulement," Refworld, Nov. 1997, http://www.refworld.org/docid/438c6d972.html.

highlighted the risk of a flawed return plan that would result in the relocation of Rohingya from refugee camps in Bangladesh to displacement camps in Myanmar.[15] Additionally, the repatriation solution proposed by Myanmar does not offer long term solutions, such as citizenship and housing, to the Rohingya. Moreover, authorities have rejected opportunities to collaborate with the UNHCR and IOM to craft a repatriation process that could comply with the obligation to uphold non-refoulement.

Myanmar's policies also undermine its obligation under Article 12 of the ICCPR to protect the freedom of movement of the Rohingya.[16] Specifically, the policy requiring the Rohingya to produce official documentation upon repatriation will likely hamper the Rohingya's ability return to their homes in Myanmar, due to their lack of citizenship status, noted above.

5. Recommendations—The Government of Myanmar Must Not Obstruct Accountability for the Violence Against the Rohingya, and Should Reform its Repatriation Policy

HRN is gravely concerned by the refugee crisis and persecution of Rohingya in Myanmar and urges the Myanmar government to:

a. Ensure all military operations and human rights abuses in Rakhine State have stopped
b. Release journalists Wa Lone and Kyaw Soe Oo from arbitrary arrest.[17]
c. Allow the fact-finding mission set in place by the Human Rights Council in March 2017 to enter Myanmar and investigate the alleged abuses.[18]
d. Conduct independent investigations of alleged crimes and hold accountable any official or non-state actor responsible for criminal acts.
e. Allow unfettered access to all relevant international officers and organizations and work alongside international actors to ensure the safe and voluntary return of refugees to Myanmar.
f. Ensure the timely and safe return of Rohingya as opposed to long-term settlement in displacement camps. This includes guarantees of non-recurrence of the violence against Rohingya, reexamining the 1982 Nationality Law to give proper citizenship to the Rohingya population, and respecting their civil liberties.
g. Implement the Governmental Advisory Commission's recommendations released in August 2017 in order to solve the structural issues in Myanmar.

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[15] Paul and Lee, "Bangladesh Agrees with Myanmar to Complete Rohingya Return in Two Years", Reuters, 16 Jan. 2018, https://www.reuters.com/article/us-myanmar-rohingya-bangladesh/bangladesh-agrees-with-myanmar-to-complete-rohingya-return-in-two-years-idUSKBN1F5012.

[16] Beech, ""No Such Thing as Rohingya': Myanmar Erases a History." *New York Times*, 2 Dec. 2017, https://www.nytimes.com/2017/12/02/world/asia/myanmar-rohingya-denial-history.html.

[17] "Two Reuters Journalists Arrested In Myanmar, Face Official Secrets Charges", Reuters, 13 Dec. 2017, https://www.reuters.com/article/us-myanmar-journalists/two-reuters-journalists-arrested-in-myanmar-face-official-secrets-charges-idUSKBN1E71CO.

[18] OHCHR, "Independent international fact-finding mission on Myanmar," 24 Mar. 2017, http://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/Index.aspx.